

THE HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARTIN LUTHER KING, JR.
COUNTY, et al.,

Plaintiffs,

vs.

SCOTT TURNER in his official capacity
as Secretary of the U.S. Department of
Housing and Urban Development, et al.,

Defendants.

No. 2:25-cv-00814-BJR

TEMPORARY RESTRAINING
ORDER

[PROPOSED]

This matter came before the Court on the moving Plaintiffs'¹ Motion for Temporary Restraining Order ("Motion"). The Court has considered the Motion, the supporting declarations, and any responses thereto, and the other pleadings and papers filed in this action. Based on the foregoing, the Court makes the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

1. Plaintiffs rely on federal funding from the Continuum of Care (CoC) program established by Congress to provide critical services to individuals and families experiencing homelessness, including rapid rehousing, permanent supportive housing, and other services.

¹ The moving plaintiffs are Martin Luther King, Jr. County (King County), Pierce County, Snohomish County, City and County of San Francisco (San Francisco), County of Santa Clara (Santa Clara), City of Boston (Boston), and City of New York (New York) (collectively, "Plaintiffs") as to the HUD Grant Conditions and King County as to the FTA Grant Conditions. Plaintiff City of Columbus did not join in the Motion.

1 2. In January 2024, Defendant U.S. Department of Housing and Urban Development
2 (HUD) posted a biennial Notice of Funding Opportunity (NOFO), inviting applications from local
3 coalitions, known as “Continuums,” for CoC funding. None of the conditions challenged here were
4 included in the NOFO. After reviewing applications, HUD conditionally awarded Plaintiffs and
5 their Continuums a total of nearly \$300 million in CoC grants in Fiscal Year 2024. Relying on
6 these awards, Plaintiffs have already committed, and in some cases expended, millions of dollars
7 for homelessness assistance services.
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9 3. In March 2025, HUD began presenting Plaintiffs with CoC grant agreements (“CoC
10 Agreements”) containing grant conditions (“CoC Grant Conditions”) that were not included in the
11 NOFO or authorized by any statute or regulation, specifically:
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13 a. The CoC Agreements state that “[t]his Agreement, the Recipient’s use of funds
14 provided under this Agreement . . . , and the Recipient’s operation of projects
15 assisted with Grant Funds” are “governed by” not only certain specified
16 statutes, rules, and grant-related documents, but also by “all current Executive
17 Orders”
18

19 b. The CoC Agreements require the recipient to certify “it does not operate any
20 programs that violate any applicable Federal anti-discrimination laws,
21 including Title VI of the Civil Rights Act of 1964.” The CoC Agreements also
22 require the recipient to agree that “its compliance in all respects with all
23 applicable Federal anti-discrimination laws is material to the U.S.
24 Government’s payment decisions” for purposes of the False Claims Act (FCA),
25 31 U.S.C. §§ 3729 et seq. President Donald J. Trump, HUD, and other agencies
26 have confirmed their agenda is to prohibit policies or programs promoting
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1 inclusion for people of all races, ethnicities, national origins, sexes, gender
2 identities, or sexual orientations through the guise of enforcing federal
3 nondiscrimination law.

4
5 c. The CoC Agreements provide that “[n]o state or unit of general local
6 government that receives funding under this grant may use that funding in a
7 manner that by design or effect facilitates the subsidization or promotion of
8 illegal immigration or abets policies that seek to shield illegal aliens from
9 deportation.”

10 d. The Grant Agreements further require the recipient to comply with “applicable
11 requirements that HUD, the Attorney General, or the U.S. Center for
12 Immigration Services may establish from time to time to comply with
13 PRWORA, Executive Order 14218, other Executive Orders or immigration
14 laws.”

15 e. The CoC Agreements also provide:

16
17 Subject to the exceptions provided by [the Personal Responsibility
18 and Work Opportunity Reconciliation Act of 1996, as amended
19 (PRWORA)], the recipient must use [the Systematic Alien
20 Verification for Entitlements (SAVE) system], or an equivalent
21 verification system approved by the Federal government, to prevent
any Federal public benefit from being provided to an ineligible alien
who entered the United States illegally or is otherwise unlawfully
present in the United States.

22 f. The CoC Agreements require the recipient to agree it “shall not use grant funds
23 to promote ‘gender ideology,’ as defined in [Executive Order] 14168.”

24 g. The CoC Agreements prohibit the recipient from using grant funds “to fund or
25 promote elective abortions, as required by [Executive Order] 14182, Enforcing
26 the Hyde Amendment.”
27

1 4. Plaintiffs now face deadlines to sign the CoC Agreements. Once a grant is
 2 conditionally awarded, HUD regulations require the recipient to sign the CoC grant agreement
 3 “[n]o later than 45 days from the date when all conditions are satisfied.” 24 C.F.R. § 11382(d)(2).
 4 Plaintiffs are reasonably concerned that HUD will attempt to use this regulation as a pretense to
 5 cancel their grant funds if the CoC Agreements are not signed within 45 days of when Plaintiffs
 6 received them. For example, San Francisco faces an apparent May 8, 2025 deadline to sign its CoC
 7 Agreement; King County and Santa Clara face an apparent May 10, 2025 deadline. New York
 8 faced an apparent May 5, 2025 deadline and returned the Agreement with changes excising the
 9 new conditions. Other plaintiffs have similar considerations.

11 5. Plaintiffs have an immediate need to receive the CoC funds to sustain ongoing
 12 programs and services. They have begun budgeting, planning, and contracting with service
 13 providers who are already incurring costs and expect reimbursement; households reliant on private
 14 rentals are at risk of eviction if there is even a short-term interruption of rent payments covered by
 15 CoC funds; and the interruption of funds could threaten the operation of supportive housing.
 16 Ultimately, any delay or loss of funding would result in disruption of services and cause irreparable
 17 damage to individuals’ lives. For example:

19 a. Without CoC funding, 700 households in King County who live in private
 20 rentals would be at risk of eviction in the short-term because their rent would
 21 not be paid, with 2,144 households impacted in total.

23 b. In San Francisco, close to 2,000 program participants would lose their housing
 24 subsidies and services and would be at risk of imminent evictions, causing
 25 individuals and families to slip back into homelessness. Interruption of funding
 26 from the CoC program supporting more than 1,400 households is estimated to
 27

1 cost San Francisco \$17 million in direct rehousing costs.

- 2 c. If unable to access the present year's CoC funding, Santa Clara would lose one
3 third of its budget for permanent supportive housing and would be forced to
4 choose between redirecting County General Funds away from other services
5 and programs towards programs for the homeless or dramatically cutting the
6 programs, which would lead to higher rates of homelessness.

7
8 6. Plaintiff King County has over \$446 million of appropriated FTA funds pursuant
9 to programs codified in title 49, chapter 53 of the U.S. Code. These funds were awarded without
10 any of the conditions challenged here.

11 7. On April 25, 2025, FTA issued a revised Master Agreement, which applies to
12 federal grants awarded to King County. The new Master Agreement contains the following new
13 conditions ("FTA Grant Conditions"):
14

- 15 a. The Master Agreement requires the recipient "agree[] to comply with all
16 applicable federal requirements and follow applicable federal guidance." The
17 Master Agreement defines "Federal Requirement" to include "[a]n applicable
18 federal law, regulation, or executive order."

- 19 b. The Master Agreement provides:

20 (1) Pursuant to section (3)(b)(iv)(A) [of the DEI Order], the
21 Recipient agrees that its compliance in all respects with all
22 applicable Federal antidiscrimination laws is material to the
23 government's payment decisions for purposes of [the FCA].

24 (2) Pursuant to section (3)(b)(iv)(B) [of the DEI Order], by entering
25 into this Agreement, the Recipient certifies that it does not operate
26 any programs promoting [DEI] initiatives that violate any applicable
27 Federal anti-discrimination laws.

While FTA grants have long required compliance with nondiscrimination laws,

1 DOT has confirmed its intent to enforce a sweeping interpretation of these
 2 conditions inconsistent with statutory text and current court interpretations of the
 3 Federal antidiscrimination laws.

4 c. The Master Agreement also provides:

5 The Recipient . . . will cooperate with Federal officials in the
 6 enforcement of Federal law, including cooperating with and not
 7 impeding U.S. Immigration and Customs Enforcement (ICE) and
 8 other Federal offices and components of the Department of
 Homeland Security in the enforcement of Federal immigration law.

9 8. King County wants to sign grant agreements and to draw down from awarded funds
 10 now in order to continue developing, constructing, maintaining, repairing, and replacing its wide
 11 range of transit vehicles and facilities across its system, but cannot sign and draw down in light of
 12 the new conditions in the Master Agreement. Moreover, King County needs to understand whether
 13 it can both draw down and plan on submitting proposals in the immediate future to plan for Metro
 14 Transit needs in Fiscal Year 2026 and beyond.

15 9. The loss of FTA funding would cause King County to substantially curtail its
 16 existing and near-future planned transit operations and entirely abandon some elements of its
 17 structure. King County would have to fundamentally rework its longstanding financial plans and
 18 procedures, capital project delivery process, and service delivery models in ways that could have
 19 significant impacts on the County's mission, its employees, and its riders. Its service network
 20 would likely have to be cut back in ways that could significantly reduce mobility options for a
 21 large portion of King County's population while potentially increasing traffic congestion and
 22 slowing the movement of freight and goods across the region.

23 II. CONCLUSIONS OF LAW

24 1. The Court has jurisdiction over Defendants and the subject matter of this action.

2. Plaintiffs' efforts to contact Defendants reasonably and substantially complied with the requirements of Federal Rule of Civil Procedure 65(b) and Local Civil Rule 65(b).

3. The Court deems no security bond is required under Rule 65(c).

4. Plaintiffs have standing to bring this suit. "A loss of funds promised under federal law satisfies Article III's standing requirement." *City & Cnty. of S.F. v. Trump* ("San Francisco"), 897 F.3d 1225, 1235 (9th Cir. 2018); *see also Dep't of Commerce v. New York*, 588 U.S. 752, 767 (2019). Here, Plaintiffs have been awarded federal grant funds that they could lose unless they accept unlawful conditions that would dictate how they govern on matters of public concern. This imminent loss of funds or infringement of rights is traceable to the conditions at issue and redressable by an order barring their enforcement. *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (cleaned up).

5. To obtain a temporary restraining order, Plaintiffs must establish (1) they are likely to succeed on the merits; (2) irreparable harm is likely in the absence of preliminary relief; (3) the balance of equities tips in Plaintiffs' favor; and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); Fed. R. Civ. P. 65(b)(1).

6. There is a strong likelihood that Plaintiffs will succeed on the merits of their claims that the CoC Grant Conditions violate (1) the Constitution's separation of powers doctrine, *San Francisco*, 897 F.3d at 1234; (2) the Fifth Amendment's vagueness doctrine, *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972); and (3) the Administrative Procedure Act (APA), 5 U.S.C. § 706(2).

7. There is a strong likelihood that Plaintiff King County will succeed on the merits of its claims that the FTA Grant Conditions violate (1) the Constitution's separation of powers doctrine, *San Francisco*, 897 F.3d at 1234; (2) the Fifth Amendment's vagueness doctrine,

1 *Grayned*, 408 U.S. at 108; and (3) the APA.

2 8. Plaintiffs have also shown that they are likely to suffer irreparable harm in the
3 absence of temporary relief.

4 9. The balance of equities tips toward Plaintiffs and the public interest strongly
5 weighs in favor of entering temporary relief.
6

7 **III. ORDER**

8 It is now, therefore, ORDERED as follows:

9 1. Plaintiffs' Motion for Temporary Restraining Order is GRANTED;

10 2. HUD and its officers, agents, servants, employees, and attorneys, and any other
11 persons who are in active concert or participation with them, are enjoined from (1) imposing or
12 enforcing the CoC Grant Conditions or any materially similar terms or conditions to any CoC
13 funds awarded to Plaintiffs or members of Plaintiffs' Continuums; (2) pausing, freezing,
14 impeding, blocking, canceling, terminating, delaying, withholding, or conditioning CoC funds,
15 or taking any other action in furtherance of any withholding or conditioning of such funds based
16 on such terms or conditions; (3) requiring Plaintiffs to make any "certification" or other
17 representation related to compliance with the CoC Grant Conditions; or (4) rescinding or
18 cancelling the CoC Agreements;
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20 3. DOT and FTA, and their officers, agents, servants, employees, and attorneys, and
21 any other persons who are in active concert or participation with them, are enjoined from (1)
22 imposing or enforcing the FTA Grant Conditions or any materially similar terms or conditions to
23 any FTA funds awarded to Plaintiff King County; (2) pausing, freezing, impeding, blocking,
24 canceling, terminating, delaying, withholding, or conditioning FTA funds, or taking any other
25 action in furtherance of any withholding or conditioning of such funds based on such terms or
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conditions; (3) requiring King County to make any “certification” or other representation related to compliance with the FTA Grant Conditions; or (4) rescinding or cancelling the FTA grant awards; and

3. This order remains in effect pending further orders from this Court.

Dated this ____ day of _____, 2025.

HONORABLE BARBARA J. ROTHSTEIN

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* *Pro Hac Vice application forthcoming*